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by the court: "Let them charge each person something so that no person pays everything."²⁴⁴

UNIFORM DISTRICT COURT ACT

UDCA article 2: District court has power to adjudicate title questions for limited purposes.

In *O'Frias v. Melton*,²⁴⁵ the Second Department recently held that a judgment on a question of title in a summary proceeding lacks res judicata effect in a subsequent *action* brought to determine title in a different court. The decision as to the district court's lack of jurisdiction was based entirely upon article 2 of the UDCA. However, although the appellate division denied res judicata effect to the judgment, it nonetheless sanctioned the district court's determination of title questions in summary proceedings for the limited purpose of settling disputes raised in the particular proceeding. This is analogous to a court's award of temporary alimony; the matrimonial trial court is not bound by a prior decree for temporary alimony.²⁴⁶ Both types of "temporary" determinations are obviously creatures of practicality.

The *O'Frias* court did, however, find the district court's judgment had res judicata effect for quite a different reason. The parties had incorporated in the judgment a stipulation relating to title. Had the plaintiffs complied with the stipulation, they would have obtained title to the property in question. But, having failed to do so, the court held that their default precluded their bringing this action. This holding is somewhat questionable because it seemingly permits the parties to give the district court the requisite subject matter jurisdiction which it otherwise lacks.²⁴⁷

As recognized by the court, there existed still another basis for dismissing the complaint. After the summary proceeding, but prior to this action, plaintiffs' action for specific performance was dismissed. This dismissal was unquestionably res judicata since it was a determination on the merits. Therefore, this more logical and less radical basis for the Second Department's holding supports the decision.

The decision is welcomed. A practitioner in summary proceedings should no longer encounter delays occasioned by stays which were necessary while a higher court determined the issue of title. Hence,

²⁴⁴ 60 Misc. 2d at 499, 302 N.Y.S.2d at 698.

²⁴⁵ 32 App. Div. 2d 1046, 303 N.Y.S.2d 785 (2d Dep't 1969).

²⁴⁶ 7B MCKINNEY'S UDCA § 204, supp. commentary 14, 15 (1968).

²⁴⁷ See UDCA §§ 201, *et seq.*

summary proceedings can proceed expeditiously to final judgment, subject, of course, to occasional reversals by a superior court.

JUDICIARY LAW

Judiciary Law § 753A: Section narrowly construed.

Section 753A of the New York Judiciary Law empowers a court of record to punish "a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced. . . ." Although the section obviously bestows broad powers upon a court, it has been narrowly construed by a lower court.

The plaintiff-husband in *Shapiro v. Shapiro*²⁴⁸ moved to punish the defendant-wife for failure to comply with the visitation rights granted him in a final judgment of separation rendered by the Supreme Court of Nassau County. This motion was made in the Supreme Court, Nassau County—now the situs of a divorce action predicated upon the judgment of separation. The divorce action was properly before the court, and jurisdiction existed over both parties. Since the Queens County Supreme Court would have a record of the final separation judgment for purposes of making a determination in the divorce action, it would appear that the most logical and practicable place to make the motion would be in Queens County. However, Justice Brown held that the court was without jurisdiction to hear the motion and that plaintiff would have to move in the court that rendered the judgment of separation. This decision was reached in spite of plaintiff's urging that the motion should be granted in order to safeguard his summer visitation rights from continued violation.

The decision finds support only by taking a narrow view of the phrase "pending in the court" as it appears in section 753A. The court defined it to mean the specific court hearing an action or rendering the final judgment. However, the supreme court is one of general jurisdiction and designations as to venue do not limit the powers of the court as to subject matter.²⁴⁹ Therefore, a more liberal and sounder interpretation of the phrase would indicate that the Supreme Court of Queens County had the requisite jurisdiction to entertain the motion.

Moreover, it should be noted that this was a motion on notice.

²⁴⁸ 60 Misc. 2d 622, 303 N.Y.S.2d 565 (Sup. Ct. Queens County 1969).

²⁴⁹ See, e.g., 7B MCKINNEY'S CPLR 501, supp. commentary 11 (1969).